



U.S. Department of Justice

Environment and Natural Resources Division

DJ#90-11-2-1109

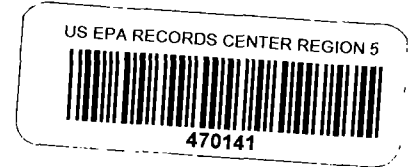
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 616-6552
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March 24, 1998

VIA OVERNIGHT MAIL

Charles M. Denton, Esquire
Mark M. Davis, Esquire
Varnum, Riddering, Schmidt & Howlett, L.L.P.
Bridgewater Place
333 Bridge Street, N.W.
Grand Rapids, Michigan 49504



Re: United States v. City of Albion, Michigan,
Civ. No. 1:97-CV-1037 (W.D. Mich.) -

Dear Counsel:

Enclosed and served on you are Plaintiff United States' Responses to City of Albion's First Set of Interrogatories, First Requests for Production of Documents and First Requests for Admissions in the above-referenced action.

If there are any questions, please do not hesitate to contact me.

Sincerely,

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division

By:

Francis J. Bixos
Francis J. Bixos
Trial Attorney

cc: Kathleen K. Schnieders, Asst. Regional Counsel, U.S. EPA.



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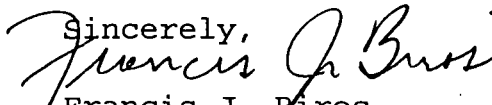
W. Francesca Ferguson
Assistant United States Attorney
Western District of Michigan
330 Ionia Avenue, N.W.
Suite 501
Grand Rapids, Michigan 49503

Re: United States v. City of Albion, Michigan, Civil No.
1:97CV1037 (W.D. Mich.) - **Filing of Certificate of
Service of Plaintiff United States' Response to City of
Albion's First Set of Interrogatories, First Requests
for Production of Documents and First Requests for
Admissions.**

Dear Francesca:

I enclose an original and two copies of the following document: Certificate of Service for Plaintiff United States' Response to City of Albion's First Set of Interrogatories, First Requests for Production of Documents and First Requests for Admissions in the above-referenced action.

As required by Local Rule, please file this document with the Clerk of Court upon receipt. Thank you very much for your assistance in this matter. If there are any questions, or if you require any additional information, please do not hesitate to contact me.

Sincerely,

Francis J. Biros
Trial Attorney

cc: Kathleen Schnieders, Assistant Regional Counsel, U.S. EPA.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

| | | |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | Case No. 1:97-CV-1037 |
| |) | |
| v. |) | Hon. David W. McKeague |
| |) | |
| CITY OF ALBION, MICHIGAN, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

PLAINTIFF UNITED STATES' RESPONSE TO CITY OF ALBION'S
FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS AND FIRST REQUESTS FOR ADMISSIONS

Plaintiff, the United States of America ("United States") by and through its attorneys, pursuant to Rule 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, hereby objects and responds to Defendant City of Albion's First Set of Interrogatories, First Requests for Admission, and First Requests for the Production of Documents to the United States.

GENERAL RESPONSES AND OBJECTIONS

1. The United States objects to the City of Albion's First Set of Interrogatories, First Requests for Admissions, and First Requests for Production of Documents to the extent that they seek to impose any duties or obligations upon the United States beyond those imposed by the Federal Rules of Civil Procedure and the

Local Rules of this Court. The United States objects to the City of Albion's service of this discovery to the extent it is inconsistent with Fed. R. Civ. P. 26(d).

2. The United States objects to the City of Albion's First Set of Interrogatories, First Requests for Admissions, and First Requests for Production of Documents to the extent they call for information or documents that are subject to the attorney-client privilege, attorney work-product protection, Rule 26(b) of the Federal Rules of Civil Procedure, the deliberative process privilege, or claims of business information confidentiality, or any other privilege or grounds for withholding information or documents. Certain documents disclosed in the responses are marked Enforcement Confidential, FOIA Exempt — Prepared in Anticipation of Litigation. These documents have been marked in this manner pursuant to certain statutes, e.g., the Freedom of Information Act. Disclosure of such documents in no way constitutes a waiver by the United States of the attorney-client privilege, attorney work-product protection, Rule 26(b) of the Federal Rules of Civil Procedure, the deliberative process privilege, or claims of business information confidentiality, or any other privilege or grounds for withholding information or documents.

3. Plaintiff objects to the City of Albion's First Set of Interrogatories, First Requests for Production of Documents, and First Requests for Admissions to the extent they seek documents that are already in Defendant City of Albion's possession. Plaintiff objects to City of Albion's discovery to the extent it seeks information and documents long available to the public in the Albion-Sheridan Township Landfill Superfund Site ("Site") Administrative Record File and Active Site File maintained in the United States Environmental Protection Agency ("EPA"), Region 5, Superfund Division Records Center, Region V (5H-7J), 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number: (312) 353-5821 and in the public Site Administrative Record repository located in the Albion Public Library, 501 South Superior Street, Albion, Michigan 49224, and pursuant to Fed. R. Civ. P. 33(d), Plaintiff refers the City of Albion to such documents.

4. The United States objects to the City of Albion's First Set of Interrogatories, First Requests for Admissions, and First Requests for Production of Documents to the extent that they would require the United States to conduct research and investigations to the acquire information not presently within its possession, that the City of Albion can perform or compile,

or would require the United States to compile or evaluate information in a manner that is unduly burdensome or oppressive.

5. The United States objects to each Interrogatory, Request for Admission, and Request for Production of Documents calling for any answer requiring "each," "all" and "every," on the grounds that such Interrogatories, Requests for Admission, and Requests for Production of Documents are overly broad, unduly burdensome, and oppressive. The United States further objects that it has not completed its investigation of facts relating to this matter. Discovery and the United States' search for documents and related material is ongoing. The responses of the United States are set forth herein without prejudice to its rights to assert additional objections or provide supplemental responses should the United States discover additional information or grounds for objections.

6. To the extent that the United States responds to these Interrogatories, Requests for Admissions, and Requests for Production of Documents, the United States does not concede that the information requested is relevant to this action. The United States expressly reserves the right to object to further discovery of the subject matter of any of these Interrogatories, Requests for Admissions, and Requests for Production of Documents

and the introduction into evidence of any response or portion thereof, or any document produced in response to these Interrogatories, Requests for Admissions, and Requests for Production of Documents.

7. The United States objects to Plaintiff's Interrogatories, Requests for Admission, and Requests for Production of Documents to the extent they require the United States to detail its legal contentions and conclusions in this action, on the grounds that such requests are premature at this stage of the action.

8. Plaintiff objects to the City of Albion's First Set of Interrogatories, First Requests for Admissions and First Requests for Production of Documents to the extent that they seek discovery of any issues subject to review based solely on an Administrative Record.

9. Plaintiff objects to the City of Albion's First Set of Interrogatories as being in excess of the number of Interrogatories allowed by the Local Rules of the Court.

10. The United States incorporates these general objections into its response to each Interrogatory, Request for Admission, and Request for Production of documents as if fully set forth therein and each such answer is subject to these General

Responses and Objections.

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

1. Produce all documents relating to the "response costs" allegedly incurred and to be incurred by Plaintiff with regard to the Sheridan Township Landfill Site at issue on the Complaint in the captioned action (the "Site").

RESPONSE:

1. Plaintiff repeats the objections stated in the General Responses and Objections, above. Notwithstanding, and without waiving these objections, please see Cumulative Cost Summary prepared September 17, 1997 (see, without limitation, documents in Bates Range 3806-3836). Additional cost documents accompany these Plaintiff's Responses to these Requests for Production of Documents (see, without limitation, documents in Bates Range 0001-3805). Plaintiff's search for responsive documents continues.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:

2. Produce all documents supporting the consistency of Plaintiff's "response costs" with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

RESPONSE:

2. Plaintiff repeats the objections stated in the General

Responses and Objections, above. Plaintiff further objects to this request for Production of Documents on the grounds that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. In an action by the United States, the Defendant has the burden of demonstrating inconsistency with the National Contingency Plan, and the Defendant in such an action may not shift to the United States the burden of proof on this issue. Plaintiff objects to this Document Request to the extent it seeks discovery on legal issues. Plaintiff objects to this Document Request to the extent it seeks discovery of any issues subject to review solely on an Administrative Record. Plaintiff objects further to the extent that this request seeks production of documents that are protected by the attorney client privilege and the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File, the Active Site file and the cost documents and summaries for the Site, some of which you have been provided previously, some of which are attached to this response, and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the

Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

Notwithstanding and without waiving these objections, Jon Peterson and Leah Evison, Regional Program Managers, possess information that the United States' response costs are not inconsistent with the National Contingency Plan, and Darius Taylor and Sylvester Colletti possess information regarding U.S. EPA's response costs. Addresses and telephones numbers are as follows:

Leah Evison
Remedial Project Manager
U.S. EPA, Region 5 (HSRM-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-7089

Jon Peterson
Remedial Project Manager
U.S. EPA, Region 5 (HSRM-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-7089

Darius Taylor
Financial Management Office
Superfund Accounting Section
U.S. EPA, Region 5 (5MF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604

(312) 353-3241

Sylvester Colletti
Final Review Accountant
Financial Management Office
U.S. EPA, Region 5 (5MF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-5399

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:

3. Produce all documents relating to the allegation in Paragraph 6 of the Complaint that Defendant "contracted with the Site owner to operate the Albion-Sheridan Landfill Site. . .".

RESPONSE:

3. Plaintiff repeats the objections stated in the General Responses and Objections, above. Plaintiff further objects to this Request for Production of Documents to the extent it seeks production of documents long available to the City of Albion. Notwithstanding and without waiving these objections, copies of the following documents (see, without limitation, documents in Bates Range 3837-3882) are attached to the United States' response to this Request for Production of Documents. The United States' search for responsive documents continues.

a. Contract between the City of Albion and Gordon D. Stevick dated 5/24/66;

b. Contract between the City of Albion and Gordon D. Stevick dated 6/26/72;

c. Contract between the City of Albion and Gordon D. Stevick dated 3/1/78;

d. Letter from Neal Godby, City Manager, to City Clerk re: June 1972 contract;

e. Letter dated 10/31/78 from Lee Davis, City Manager to Michigan Department of Natural Resources seeking a meeting re: the landfill site;

f. Excerpts from minutes from Proceedings of City of Albion Common Council meeting for 1966, particularly 3/21/66, 3/23/66, 7/18/66, 8/22/66, 9/19/66, 11/7/66, and 12/5/66;

g. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1967, particularly 6/19/67, 10/2/67, 11/6/67, 11/20/67, and 12/4/67;

h. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1968, particularly 4/9/68;

i. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1969, particularly 5/26/69, 8/4/69;

j. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1970, particularly 2/16/70, 4/6/70, 4/20/70, 5/4/70, and 5/25/70;

k. Excerpts from minutes from Proceedings of City of

Albion Common Council Meeting for 1972, particularly, 3/20/72;

1. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings from 1977, particularly, 2/7/77, 2/21/77.

Persons with information and knowledge concerning the contracts and agreements between the City of Albion and Gordon Stevick are identified in these documents and include, but are not limited to: Neal A. Godby, City Manager in 1972; Lyle M. Johnson, City of Albion Mayor in 1966; Charles W. Jones, City of Albion Mayor in 1975; Lee Davis, City Manager in 1978; William Rieger, City Manager in 1966. The United States is not currently aware of the location of these persons. The United States' search for responsive documents continues.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4:

4. Produce all PRP Search Reports and related materials prepared for, by, or furnished to Plaintiff or U.S. EPA, with regard to persons potentially responsible for the Site contamination alleged herein.

RESPONSE:

The United States objects to this request to produce on the extent that it seeks the production of information subject to the attorney work-product privilege. See, Hickman v. Taylor, 329 U.S. 495 (Jan.13, 1947); Upjohn Company v. United States, 449 U.S. 383

(Jan. 13, 1981). Notwithstanding and without waiving this objection, the United States will provide City of Albion with access to additional documents that are available in the Administrative Record and the Active Site File for the Site, at a mutually agreed upon time and place. In addition, the United States attaches documents responsive to this Request for Production of Documents and to Interrogatory No. 9. The United States' search for responsive documents continues.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5:

5. Produce all documents identified in the accompanying Interrogatories.

RESPONSE:

5. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to the term "all documents identified," as overbroad and unduly burdensome. Plaintiff further objects to this Interrogatory as being vague and ambiguous. Subject to and without waiving these objections, please see Plaintiff's responses to Defendant's First Set of Interrogatories and documents accompanying these discovery responses. Plaintiff's search for facts and relevant documents continues.

PLAINTIFF'S RESPONSES
TO DEFENDANTS FIRST SET OF
INTERROGATORIES

INTERROGATORY NO. 1:

1. For each and every of the following questions, please identify by name, title, and address, each person(s) providing information for Plaintiff's Answer to that particular Interrogatory.

RESPONSE:

1. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory to the extent that it seeks information protected by the attorney work-product doctrine or the attorney-client privilege. Notwithstanding and without waiving its objections, Leah Evison, Remedial Project Manager; Jon Peterson, Remedial Project Manager; Kathleen Schnieders, Attorney Advisor; and Francis J. Biros, Trial Attorney. In addition, please see responses to Interrogatories 2-19 and accompanying documents.

INTERROGATORY NO. 2:

2. State whether Plaintiff has ever claimed that Decker Manufacturing is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

2. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued a notice letter under CERCLA to Decker Manufacturing on June 6, 1995 and issued the same administrative order to Decker Manufacturing that it issued to the City of Albion on October 11, 1995 (see, without limitation, documents in Bates Range 3883-4058). In each of these documents, U.S. EPA identified Decker Manufacturing as a potentially responsible party liable under Section 107(a) of CERCLA.

2(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

2(b) Decker Manufacturing was identified as a such a person.

INTERROGATORY NO. 3:

3. State whether Plaintiff has ever claimed that Corning, Inc., f/k/a/ Corning Glass Works, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

3. Plaintiff repeats the objections stated in the General

Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g) (2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA a issued notice letters under CERCLA to Corning, Inc., on June 3, 1991 and June 6, 1995, and issued the same administrative order to Corning, Inc., on October 11, 1995, as it issued to the City of Albion (see, without limitation, documents in Bates Range 3883-4058). In each of these documents, U.S. EPA identified Corning, Inc., as a potentially responsible party liable under Section 107(a) of CERCLA.

3(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work-

product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

3(b) Corning, Inc., was identified as such a person.

INTERROGATORY NO. 4:

4. State whether Plaintiff has ever claimed that Eagle-Pitcher Industries, f/k/a/ Union Steel, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

4. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is

irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued an Unilateral Administrative Order on March 19, 1990, and a notice letter under CERCLA, to Eagle-Picher Industries, f/k/a Union Steel, on June 3, 1991 (see, without limitation, documents in Bates Range 3883-4058). In these documents, U.S. EPA identified Eagle-Picher Industries, f/k/a Union Steel, as a potentially responsible party liable under Section 107(a) of CERCLA.

4(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention

to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

4(b) Eagle-Picher Industries, f/k/a Union Steel, was identified as such a person.

INTERROGATORY NO. 5.:

5. State whether Plaintiff has ever claimed that Cooper Industries, Inc., f/k/a/ McGraw-Edison, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

5. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the

discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued notice letters under CERCLA to Cooper Industries, Inc., f/k/a/ McGraw-Edison, on June 3, 1991 and June 6, 1995 and issued the same administrative order to Cooper Industries, Inc., f/k/a/ McGraw-Edison, on October 11, 1995, that it issued to the City of Albion (see, without limitation, documents in Bates Range 3883-4058). In each of these documents, U.S. EPA identified Cooper Industries, Inc., f/k/a/ McGraw-Edison, as a potentially responsible party liable under Section 107(a) of CERCLA.

5(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention

to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

5(b) Cooper Industries, Inc., f/k/a McGraw-Edison, was identified as such a person.

INTERROGATORY NO. 6:

6. State whether Plaintiff has ever claimed that Gordon Stevick (or his Estate, heirs, assigns or transferees), is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

6. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the

discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued an administrative order to Gordon Stevick on March 19, 1990, and issued a notice letter under CERCLA to Gordon Stevick on June 3, 1991 (see, without limitation, documents in Bates Range 3883-4058). In each of these documents, U.S. EPA identified Gordon Stevick as a potentially responsible party under Section 107(a) of CERCLA.

6(a) The United States objects to this subpart to the extent that it seeks information subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your

attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

6(b) Gordon Stevick was identified as such a person.

INTERROGATORY NO. 7:

7. State all facts, reasons, and documents which support the statement by the U.S. EPA Assistant Regional Counsel Kurt Lindland on September 24, 1997, that the City of Albion and other parties are liable for the claimed unreimbursed response costs, and the basis for his personal knowledge.

RESPONSE:

7. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory as vague and ambiguous. Plaintiff further objects that this Interrogatory prematurely and improperly demands a legal conclusion and seeks to require the United States to provide legal contentions by way of Interrogatory. The United States further objects to this Interrogatory to the extent that it requires the United States to detail its legal contentions and supporting facts on the grounds that such requests are premature.

at this stage of discovery. The United States also objects to this Interrogatory in that it seeks documents, such as notes of interviews, prepared by any attorney that are protected by the attorney work-product doctrine and will not be produced. See, Hickman v. Taylor, 329 U.S. 495 (Jan 1, 1947); Upjohn Company v. United States, 449 U.S. 383 (Jan. 13, 1981)

Notwithstanding and without waiving the foregoing objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

INTERROGATORY NO. 8:

8. Identify all persons Plaintiff has at any time considered to be potentially responsible or liable for the Site contamination at issue.

RESPONSE:

8. Plaintiff repeats the objections stated in the

General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

The United States objects to this Interrogatory to the extent that it seeks information and documents protected by the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region

5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. Notwithstanding and without waiving any objections, Plaintiff directs Defendant's attention to the response to Interrogatory 9, and documents attached to this response. The United States' search for responsive documents continues.

INTERROGATORY NO. 9:

9. Identify all persons to whom U.S. EPA issued requests for information pursuant to CERCLA Section 104(e), 42 U.S.C. § 9604(e), and all documents relating thereto.

RESPONSE:

9. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory insofar as the request for identification of "all persons," and "all documents relating thereto." is vague and ambiguous, and overly broad and unduly burdensome. The United States also objects on the grounds that the material sought in this Interrogatory is not relevant to the its action against the City of Albion. The United States further objects to this Interrogatory to the extent it seeks information that is protected by the attorney work-product and attorney client privileges.

Notwithstanding and without waiving these objections,

documents responsive to the second portion are attached to this Plaintiff's discovery responses (see, without limitation, documents in Bates Range 4059-7703). Plaintiff further responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time.

Notwithstanding and without waiving the foregoing objections, the United States responds to the first portion of the Interrogatory:

- City of Albion
- Albion Township
- Albion Sanitary Service
- ~~Albion~~ Albion Metal Products
- Albion Radiator Service
- Albion College
- Albion Ford-Mercury
- Blake's Refuse Service
- Bilicke Oldsmobile Sales, Inc.
- Brooks Foundry
- William Brown
- Bundy Mechanical
- City Disposal Corporation
- Clark Oil Company / Apex Oil Company
- Concord Township

Corning Glass Works
George Chambers
Clarence Township
Concord Township
Harold & Isabell Driscoll
Decker Manufacturing
Eagle-Pitcher Industries f/k/a Union Steel
Evans Body Shop
Joe Fitzpatrick
Frahm Chevrolet, Buick, Pontiac
Harvard Industries/ Hayes-Albion Corporation
Haines Auto Service
Harrison's Car Care Center
Village of Homer
Ideal Castings
Jim's Standard
Kinsey Automotive Center
McGraw Edison / Cooper Industries
Mel's Auto Sales
Mike Egnatuck c/o Shell Food Mart
M&R Services
Ed Nieko Body Shop
Robert Norton / B&D Auto Repair
Nelson Chemical
Plassman & Company
Luster & Ollie Mae Prater
Parma Township
Professional Refuse Service
Jerome Richardson
Sheridan Industries
Sheridan Township
Springport Township
Scotts Disposal Service
Seiler Tank Truck Service
Steel Products, Inc
Gordon Stevick
Thompson's Brake Service
Turner Sanitation Service
Waste Management of Battle Creek / Refuse Service Inc.
Wes' Automotive Service
Wolf's Auto Repair
Zephyr, Inc
Zick's Body Shop

INTERROGATORY NO. 10:

10. Identify all documents and persons with knowledge relating to the allegation in Paragraph 6 of the Complaint that Defendant "contracted with the Site owner to operate the Albion-Sheridan Landfill Site"

RESPONSE:

10. Plaintiff repeats the objections stated in the General Responses and Objections, above. Notwithstanding and without waiving these objections, please see the United States' Response to Request for Production of Documents No. 3, and the accompanying documentation.

INTERROGATORY NO. 11:

11. Identify all facts, reasons, documents, and persons with knowledge relative to the allegations of Paragraph 8 of the Complaint that the city of Albion "maintained control over and had responsibility for the use of the Site. . ."

RESPONSE:

11. Please see Response to Interrogatory No. 10.

INTERROGATORY NO. 12:

12. Does Plaintiff allege that Defendant has any responsibility for the alleged disposal of "industrial wastes" (Complaint Paragraph 9) at the Sheridan Township Landfill Site? If so, identify all facts, reasons, documents, and persons with knowledge relating to such allegation.

RESPONSE:

12. The United States alleges that as an operator of the site, the City of Albion is responsible, pursuant to CERCLA, for

the disposal of industrial wastes at the site. The United States refers Defendant to documents produced in the Response to Request for Production of Documents No. 3, wherein contract documents (a), (b) and (c) include language that states:

WHEREAS, the City Council of the City of Albion, Michigan, a Municipal Corporation, desires to continue to provide and maintain a waste yard for the use of City of Albion residents and industries

The United States refers Defendant to other documents and persons referred to in its Response to Request for Production of Documents No. 3 and Response to Interrogatory No. 1. The United States' investigation of the facts continues.

INTERROGATORY NO. 13:

13. Identify any and all notices of violation issued by the Michigan Department of Natural Resources ("MDNR") or any other governmental agency in conjunction with the landfill operations at the Site during its operation, and all persons with knowledge of any such notices.

RESPONSE:

13. Plaintiff repeats the objections stated in the General Responses and Objections, above, and objects further to this Interrogatory on the grounds that a request for "any and all notices of violation" and "all persons with knowledge" renders the Interrogatory vague and ambiguous and overly broad and burdensome. Notwithstanding and without waiving these

objections, the United States is not aware of any notices of violation issued by the Michigan Department of Natural Resources. Plaintiff responds further by directing Defendant's attention to the attached documents and persons identified therein (see, without limitation, documents in Bates Range 7704-7716); as well as the documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time.

INTERROGATORY NO. 14:

14. Does Plaintiff allege that the City of Albion is responsible for the "hazardous substances" which were allegedly "spilled, leaked, discharged, or otherwise disposed of at the Site" (Complaint Paragraph 14)? If so, identify all facts, reasons, documents and persons with knowledge supporting such allegation.

RESPONSE:

14. The United States alleges that the City of Albion is responsible, pursuant to CERCLA, as an operator of the Albion-Sheridan Township Landfill Site during the relevant

period, at which hazardous substances were disposed. Please see the documents attached hereto provided in response to Defendant's discovery. In addition, Plaintiff refers defendant to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time.

INTERROGATORY NO. 15:

15. Identify all facts, reasons, documents and persons with knowledge relating to the allegation in Paragraph 19 of the Complaint that "Defendant City of Albion operated the Site at the time of disposal of hazardous substances. . . ."

RESPONSE:

15. The United States repeats the objections stated in the General Responses and Objections, above. Notwithstanding and without waiving its objections, please see the United States' Response to Request for Production of Documents No. 3, and the accompanying documents. In addition, Plaintiff refers Defendant to the documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your

attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time.

INTERROGATORY NO. 16:

16. Identify all facts, reasons, documents, and persons with knowledge supporting the allegation that the Site posed an "imminent and substantial endangerment to the public health or welfare or the environment" as of the October 11, 1995, issuance of the U.S. EPA Unilateral Administrative Order.

RESPONSE:

16. The United States repeats the objections stated in the General responses and Objections, above. Notwithstanding and without waiving its objections, Plaintiff refers Defendant to the documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. In addition, please see the Unilateral

Administrative Orders dated March 19, 1990 and October 11, 1995.

INTERROGATORY NO. 17:

17. Identify all documents and persons with knowledge supporting the consistency of Plaintiff's claimed "response costs" with the National Contingency Plan ("NCP") 40 C.F.R. Part 300.

RESPONSE:

17. Plaintiff repeats the objections stated in the General Responses and Objections, above. Plaintiff also objects to this Interrogatory on the ground that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In an action by the United States, the defendant has the burden of demonstrating inconsistency with the National Contingency Plan, and the defendant in such an action may not shift to the United States the burden of proof on this issue. Plaintiff also objects to this Interrogatory to the extent it seeks discovery on legal issues, and to the extent that it misstates the judicial standard for CERCLA cost recovery actions. Plaintiff further objects to this Document Request to the extent it seeks discovery of any issues subject to review solely on an Administrative Record. Plaintiff objects further to the extent that this request seeks production of documents that are protected by the attorney client privilege and the

attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File, the Active Site file and the cost documentation and summaries for the Site, some of which you have been provided, accompany this discovery response, and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

Notwithstanding and without waiving these objections, please see Response to request for Production of Documents No. 2.

INTERROGATORY NO. 18:

18. Identify all witness statements, interviews and depositions taken by, for or provided to Plaintiff or U.S. EPA with regard to the Site.

RESPONSE:

18. Plaintiff repeats the objections stated in the General Responses and Objections, above. Notwithstanding and without waiving these objections, the following persons were deposed on

the dates indicated by U.S. EPA personnel in the matter of the Albion-Sheridan Township Landfill:

1. Deposition of William Rieger on June 4, 1992.
2. Deposition of Arlo Wilkerson on May 24, 1990;
3. Deposition of Lloyd Mosher on July 26, 1991;
4. Deposition of Vernon Wainwright on June 3, 1992;
5. Deposition of Donald Hull on June 4, 1992;

The United States attaches copies of the deposition transcripts to these discovery responses (see, without limitation, documents in Bates Range 7717-7997).

INTERROGATORY NO. 19:

19. As to any of the accompanying Requests to Admit which Plaintiff does not unequivocally admit, identify all facts, reasons, documents and persons with knowledge to support Plaintiff's denial of the Request to Admit.

RESPONSE:

19. Please see Plaintiff's Responses to the City of Albion's First Requests for Admissions.

I, Leah Evison, hereby declare under penalty of perjury that I am a Remedial Project Manager for Region 5 of the United States Environmental Protection Agency ("U.S. EPA"); that I verified the Plaintiff United States' Responses to the City of Albion's First Set of Interrogatories and First Request for Production of Documents, for and on behalf of the United States prior to service; that certain of the matters stated therein are not within my personal knowledge; that the facts stated therein have been assembled by authorized employees of the U.S. EPA and counsel for the United States; and that I am informed that the facts stated therein are true to the best of my knowledge and belief.

Leah Evison
Leah Evison

3/23/98
Date

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

1. Admit that City of Albion is not and was not the "owner" of the Sheridan Township Landfill Site at issue in the Complaint in the captioned action (the "Site").

RESPONSE:

1. Admitted insofar as the City of Albion was not the property title holder to the Albion-Sheridan Township Landfill Site, based upon information available to U.S. EPA to date.

REQUEST FOR ADMISSION NO. 2:

2. Admit that Gordon Stevick was the owner of the Sheridan Township Landfill Site during all pertinent times.

RESPONSE:

2. Admitted that Gordon Stevick was the property title holder to the Albion-Sheridan Township Landfill Site during pertinent times.

REQUEST FOR ADMISSION NO. 3:

3. Admit that Gordon Stevick operated the Sheridan Township Landfill Site during all pertinent times.

RESPONSE:

3. Admitted insofar as Gordon Stevick operated the Albion-Sheridan Township Landfill Site in conjunction with the City of Albion, pursuant to contractual agreements between Gordon

Stevick and the City of Albion during the period 1966-1981.

REQUEST FOR ADMISSION NO. 4:

4. Admit that the Sheridan Township Landfill Site is located in Sheridan Township, Michigan, and not within the City of Albion.

RESPONSE:

4. Admitted.

REQUEST FOR ADMISSION NO. 5:

5. Admit that the City of Albion is not and was not a tenant, lessee, or holder of any other real estate interest in the Sheridan Township Landfill Site.

RESPONSE:

5. Admitted based upon information available to U.S. EPA to date. However, the City of Albion had a purchase option on parcels of the Albion-Sheridan Township Landfill Site in its May 24, 1966 Agreement with Gordon D. Stevick, and a lease option on certain parcels in its June 26, 1972 Agreement with Gordon D. and Marguerite M. Stevick.

REQUEST FOR ADMISSION NO. 6:

6. Admit that Gordon Stevick, not the City of Albion, was licensed or permitted by the State of Michigan to operate the Site as a landfill.

RESPONSE:

6. Admitted. Gordon Stevick was permitted by the State of Michigan to operate the Albion-Sheridan Township Landfill Site.

Plaintiff has no information as to whether the City of Albion was permitted, or was not permitted, by the State of Michigan to operate the Albion-Sheridan Township Landfill Site.

REQUEST FOR ADMISSION NO. 7:

7. Admit that the City of Albion did not exercise actual and substantial control of the day-to-day waste disposal activities at the Site.

RESPONSE:

7. Denied. The meeting notes from the Proceedings of the Albion City Council's meetings indicate the exercise of actual and substantial control over the day-to-day waste disposal activities at the Site. (Please see Response to Request for Production of Documents No. 3.)

REQUEST FOR ADMISSION NO. 8:

8. Admit that neither Gordon Stevick, nor any Landfill employees, were employed by the City of Albion in connection with the Site disposal activities at issue.

RESPONSE:

8. Admitted, based on information available to U.S. EPA to date is concerned. The 1966, 1972 and 1975 contracts between the City and Gordon Stevick provide that ". . . the Contractor is an independent contractor and is not an employee of the City, and that any persons employed by the Contractor to provide services provided in this Agreement shall be employees of the Contractor

and not employees of the City." However, the contracts also provide for payment by the City of sums of money, ". . . in consideration of the land, labor, equipment, supervision and services furnished by the Contractor. . . ."

REQUEST FOR ADMISSION NO. 9:

9. Admit that no City of Albion employee ever worked at the Sheridan Township Landfill in connection with the Site disposal activities at issue within the scope of their employment with the City of Albion.

RESPONSE:

9. Admitted, based on the information available to U.S. EPA to date is concerned. However, according to the March 1, 1975 contract between Gordon Stevick and the City, the Director of Public Works was authorized to place requirements upon the operation in the scope of his or her employment. See e.g., Agreement between the City of Albion and Gordon D. Stevick, dated March 1, 1975, pg. 2, ¶ 5, and Agreement between the City of Albion and Gordon D. and Marguerite M. Stevick, dated May 24, 1966, pg. 2, ¶ 5.

REQUEST FOR ADMISSION NO. 10:

10. Admit that Gordon Stevick maintained contracts or arrangements with multiple municipalities, businesses and persons located both within and outside the City of Albion for waste disposal at the Site.

RESPONSE:

10. Admitted that Gordon Stevick was authorized by his contracts with the City of Albion to accept waste from other entities. Acceptance of wastes from several entities is acknowledged by the City of Albion in various minutes of Proceedings of the Common Council of the City of Albion. Please see Response to Request for Production of Documents No. 3. The United States does not possess information regarding any particular contracts or arrangements Gordon Stevick may have entered into with other entities.

REQUEST FOR ADMISSION NO. 11:

11. Admit that the U.S. Environmental Protection Agency ("U.S. EPA") identified other potentially responsible parties ("PRPs") for the Sheridan Township Landfill Site, but did not join those other persons in this litigation.

RESPONSE:

11. Admitted.

REQUEST FOR ADMISSION NO. 12:

12. Admit that the City of Albion timely responded to the U.S. EPA Unilateral Administrative Order issued October 11, 1995.

RESPONSE:

12. Admitted, insofar as the City responded in a letter dated November 5, 1995, in which the City, among other things, requested that U.S. EPA's Unilateral Administrative Order be

modified to delete and dismiss the City as a respondent.

REQUEST FOR ADMISSION NO. 13:

13. Admit that the City of Albion's response to the October 11, 1995, U.S. EPA Unilateral Administrative Order denied liability but offered a compromise resolution.

RESPONSE:

13. Denied. There is no compromise proposed in the December 11, 1995 response to the UAO. The City of Albion made a settlement offer in its November 5, 1995 letter which was wholly unacceptable and disproportionate to the City of Albion's liability with respect to the Albion-Sheridan Township Landfill Superfund Site.

REQUEST FOR ADMISSION NO. 14:

14. Admit that the City of Albion had "sufficient cause" for any failure to comply with the October 11, 1995, U.S. EPA Unilateral Administrative Order.

RESPONSE:

14. Denied. The City of Albion based its "Sufficient cause" defense on the assertion that the City was not an operator of the site. As this issue is at the center of the litigation, United States obviously disagrees with the City's position. See, letter of George Davis, counsel for the City of Albion, on behalf of the City of Albion, dated December 11, 1995.

As to objections only:
Respectfully Submitted,

Lois J. Schiffer
Assistant Attorney General
Environment and Natural
Resources Division

Francis J. Biros

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Chicago, Illinois 60604-3590
(312) 353-8912

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

| | | |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | Case No. 1:97-CV-1037 |
| |) | |
| v. |) | Hon. David W. McKeague |
| |) | |
| CITY OF ALBION, MICHIGAN, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CERTIFICATE OF SERVICE

I hereby certify that on the twenty-fourth day of March 1998, I caused copies of the foregoing Plaintiff United States' Response to City of Albion's First Set of Interrogatories, First Requests for Production of Documents and First Requests for Admissions, and this Certificate of Service, to be sent by overnight express mail for service upon the following counsel:

Charles M. Denton (P33269)
Mark M. Davis (P43529)
Varnum, Riddering, Schmidt & Howlett, L.L.P.
Bridgewater Place
333 Bridge Street, Lower Level
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Office of Resistant Counsel
U.S.
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